

DOCUMENT RESUME

02344 - [A1332306]

[Pre-Award Benchmark Testing]. B-188013. May 6, 1977. 3 pp.

Decision re: Emerson Electric Co.; by Paul G. Dembling, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: General Property and Records Management (804).

Organization Concerned: Veterans Administration.

The protester objected to the request for proposals for an uninterruptible power supply, which included a set time for benchmark testing for offerors who submitted otherwise acceptable technical proposals. The failure of the offeror to permit the agency to conduct scheduled benchmark testing disqualified the offeror from participating in the second step of the procurement and rendered other issues moot. (Author/SC)

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188013

DATE: May 6, 1977

MATTER OF: Emerson Electric Co.

DIGEST:

Failure of offeror submitting an otherwise acceptable technical proposal to permit agency to conduct benchmark testing during step one of two-step advertised procurement in accordance with a testing schedule found to be reasonable and related to the Government's minimum needs disqualified offeror from participating in second step and renders other issues raised moot and not for consideration.

Emerson Electric Company (Emerson) protests Veterans Administration (VA) request for proposals (RFP) 101-3-77, issued November 1, 1976. The RFP is the first step of a two-step formally advertised procurement for an uninterruptible power supply (UPS) for the VA data processing center at the VA's Kanes facility located in Broadview, Illinois. Among other things, Emerson protests the time set for benchmark testing for offerors which submitted otherwise acceptable technical proposals.

The RFP contains a "Pre-Award Benchmark Test" provision, to be used in further determining acceptable technical proposals. The second step IFB was restricted to those offerors who submitted acceptable technical proposals in step one.

The original dates specified in step one for benchmark testing was "in no less than 10 days and no more than 45 days from the date of proposal submission (December 15, 1976). On November 19, 1976, Emerson requested that the benchmark tests be conducted at the same time as the "Social Security" UPS tests scheduled for January 1977. Thereafter, the VA amended the RFP stating that benchmark testing "will be scheduled during the last week in January 1977 and is anticipated to continue through the third week in February, independent of benchmarking run by any other Government agency." On December 6, 1976, Emerson protested to the agency, in part complaining that the benchmark testing schedule was unreasonably early because the equipment was not a stock item readily available for testing and "cannot be constructed on such short notice." The VA denied the protest on December 14, 1976, and a protest to this Office followed.

02344
2306

B-188013

Emerson's technical proposal was thereafter evaluated and determined to be acceptable (subject to benchmark testing), and by letter dated December 30, 1976, the VA informed Emerson that benchmark testing at Emerson was scheduled for January 31 - February 3, 1977. The VA denied Emerson's subsequent request that the tests be delayed until GAO rendered its decision on its protest.

The VA benchmark testing team arrived at Emerson's facility on January 31, 1977, and although the equipment was allegedly ready for testing, the team was informed that Emerson did not want to perform the tests because of the pending GAO protest. Emerson was advised that failure to permit testing starting on February 1, 1977, would disqualify the firm from further consideration, but Emerson nonetheless declined to permit the test to proceed. The firm was consequently disqualified from participating in step two. It is reported that on February 10, 1977, Emerson advised the VA that it was then prepared to commence benchmark testing but it was told that "/it was/ considered non-responsive" and therefore no test would be conducted. Emerson has not contested any of the facts reported by the VA and has requested that the matter be decided on the basis of the record now before us.

Having carefully reviewed the record, we conclude that the VA acted reasonably. Nothing in the record suggests that any other firm considered either the original or the extended benchmark testing schedule to be unreasonable, nor does Emerson offer any particular evidence of that fact. Moreover, in our opinion, the record shows that the agency acted fairly and in good faith when it promptly extended the testing schedule dates beyond those originally requested by Emerson less than 3 weeks prior to the time of that firm's protest to the agency. We do not believe that an agency is required to jeopardize its own projected operating requirements clearly specified in the solicitation because of the needs of any one offeror.

No restrictive conditions or limitations relating to the benchmark test schedule favoring any particular offeror are apparent from the record and none has been asserted; nor is there any basis to assume that the test schedule was inconsistent with the actual needs of the agency to complete construction of its data processing facility. In our opinion, Emerson had adequate notice of the date the testing was to commence, and although it had approximately 1 week's notice that testing would not be delayed pending a decision on its protest, it failed to advise the VA that such testing would not be permitted until after the arrival of the testing team. The record

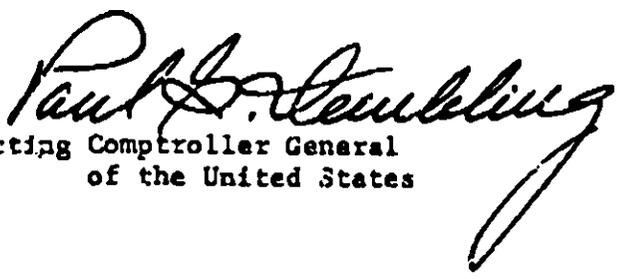
B-188013

shows that Emerson was adequately notified of the consequences of its refusal to permit testing of equipment which was asserted to have been available for that testing. In this connection, it appears to us that the asserted availability of the equipment contradicts Emerson's statements that such equipment could not be made available in the time allowed.

Since the VA's refusal to further delay the testing was reasonably related to its minimum needs, we cannot conclude that the agency's determination to disqualify Emerson from consideration for failure to permit such testing was unfounded.

In addition, because Emerson's technical proposal was found to be technically acceptable save only for the benchmark testing, and because step one of a two-step advertised procurement is the qualifying phase of the procurement, Emerson's failure to qualify itself for step two renders the other issues raised by the protest moot and consequently need not be further considered.

The protest is denied.


Acting Comptroller General
of the United States